IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE SEVENTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and
HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL NO : 458 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 17/02/2005 in WP NO : 23207 OF 2003 on the file of the High Court.)

Between:

M/s.Kirti Enterprises, rep.by its Managing Partner, K.Yogeshwar Reddy,
S/o.Ram Reddy,
R/o.324/2RT, S.R.Nagar, Hyderabad.

..... APPELLANT

AND

1 The Government of Andhra Pradesh, Agriculture and Cooperation (Coop-III) Department,
rep.by its Principal Secretary, Secretariat, Hyderabad.
2 The Managing Director, The Charminar Cooperative Urban Bank Ltd.,
12-2-831/9, 1st floor, Miraz commercial Complex, Mehdipatnam, Hyderabad.

3 The Co-operative Sub-Registrar/Sale officer, The
Charminar Cooperative Urban Bank Ltd.,
12-2-831/9, 1st floor, Miraz Commercial Complex,
Mehdipatnam, Hyderabad.

4 R.Venkateshwarlu, S/o.R.Bhadraiah,
R/o. Flat No.202, Sai Santosh Residency, Street No.1,
Tarnaka, Hyderabad.

.....RESPONDENTS

Counsel for the Appellant : MR.C.V.MOHAN REDDY

Counsel for the Respondent No.1: GP FOR COOPERATION

Counsel for the respondent Nos. 2 & 3: MR. NOOTY RAMA MOHANA RAO.

Counsel for the respondent No.4: MR. V.VENUGOPALA RAO.

The Court at the admission stage made the following:

ORAL JUDGMENT:

(per Hon'ble The Chief Justice)

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1. Heard. We do not find any merit in this appeal arising out of the order passed by the learned single Judge dismissing the appellant's writ petition. Appellant obtained loan from the Charminar Cooperative Urban Bank Limited and on having committed default in repayment of the loan, suffered an award passed under Section 61 of the A.P. Cooperative Societies Act, 1964, on 26.02.2001. Then his appeal before the Cooperative Tribunal failed. Therefore, the award became final. In order to execute the award,

proceedings were taken out to have the property sold. The shops belonging to the appellant were sold in favour of two individuals under public auction. Sale was confirmed in E.P.No.154 of 2001 dated 13.03.2002. Confirmation of sale was challenged before the Cooperative Tribunal. Appeal was dismissed, against which W.P.No.19706 of 2002 was filed which is stated to be pending.

2. In order to recover the balance amount, auction of the house property was held on 05.02.2002. Thereafter petitioner tried to stall the proceedings and wanted to take benefit of G.O.Ms.No.4, dated 27.02.2003, for one time settlement. Since he applied for one time settlement and since he is a borrower, benefit of the G.O., ought to have given to him but it was not given to him. His application for one time settlement was rejected by 3rd respondent who has no authority to reject the same. Learned single Judge went through various G.Os and held that the petitioner – appellant would not come under the definition of 'borrower' and none of the G.Os would be applicable to a person who has suffered the award.

3. We are also of the view that borrower is a person who has taken loan but against whom there is no award passed, yet under A.P. Cooperative Societies Act, defaulter is a person who has defaulted in making payment of the amount. Petitioner – appellant would not come within the definition of two clauses. For that reason, he cannot take undue advantage of the concession given in various G.Os to such of those persons who are termed as borrowers and having defaulted in making payment and in order to have the loans rescheduled. Once the matter was taken before the authority for passing an award and after the award is passed, it is only that award that has to be executed which cannot be ordered to be rescheduled, and the submission of the petitioner – appellant was rightly rejected by the learned single Judge.

4. In the result, writ appeal fails and is dismissed. No costs.

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DEVINDER GUPTA. C.J.,

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B. SESHASAYANA REDDY. J.,

Dated: 17.03.2005.

VRK.

To

1 The Principal Secretary to Government, Agriculture and Cooperation (Coop-III) Department,
Secretariat, Hyderabad.
2 The Managing Director, The Charminar Cooperative Urban Bank Ltd.,
12-2-831/9, 1st floor, Miraz Commercial Complex, Mehdipatnam, Hyderabad.
3 The Co-operative Sub-Registrar/Sale officer, The Charminar Cooperative Urban Bank Ltd.,
12-2-831/9, 1st floor, Miraz Commercial Complex, Mehdipatnam, Hyderabad.
4. Two CCs to G.P., for Cooperation, High Court Buildings, Hyderabad (OUT).

5. Two CD copies.

*Form-NIC-OGS/WA {**JA**}*

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE B. SESHASAYANA REDDY.

W.A.NO. 458 OF 2005.

(Judgment of the Bench delivered by

Hon'ble The Chief Justice)

Dt: 17.03.2005.